

**STATEMENT OF THE FREEDOM OF INFORMATION COMMISSION ON  
HOUSE BILL 6354, AN ACT IMPLEMENTING THE GOVERNOR'S BUDGET  
RECOMMENDATIONS CONCERNING GENERAL GOVERNMENT**

**March 22, 2013**

The Freedom of Information Commission ("FOIC") appreciates the opportunity to comment on House Bill 6354, An Act Implementing the Governor's Budget Recommendations Concerning General Government. The Commission strongly opposes sections 131, 133 and 141 of the bill, which adversely impact the FOIC's independence as well as its internal processes and functions.

1. Authority over the Executive Administrator

Section 133 takes from the Governmental Accountability Commission ("GAC"), and gives to the governor, the authority to terminate the executive administrator of the Office of Governmental Accountability ("OGA"), of which the FOIC is a part. When the legislature established the OGA a mere two years ago, it had given that authority to GAC as an important safeguard on independence. If this proposal becomes law, the executive administrator would answer only to the governor, and a political appointee would be in control of the legal staffs of the currently independent commissions and boards within the OGA. The FOIC urges the committee to defeat this proposal, which seeks to undo what the legislature bravely did in support of the independence of the watchdog agencies just two short sessions ago.

2. Removal of Staff and Substantive Functions from the FOI Commission and Other Watchdog Agencies

Section 131 creates within the OGA a new and unnecessary layer of bureaucracy in the form of a "legal and enforcement division." According to the bill, this division will adjudicate not only Freedom of Information ("FOI") complaints and hearings, but also the complaints and hearings of the State Elections Enforcement Commission, the Office of State Ethics, the Judicial Review Council, and the State Board of Firearms Permit Examiners. All current FOI Commission staff attorneys and administrative personnel whose duties include the scheduling of hearings and the processing of final decisions will be transferred from the Commission staff to the new division. Such transferred staff will be under the management of the executive administrator of the OGA, who shall have the ability to hire and fire staff.

Section 141 takes from the FOIC the ability to review and process FOI complaints, with the exception of complaints filed against the State Elections Enforcement Commission and the Office of State Ethics. Under the bill, all other complaints, which would be the vast majority of complaints filed with the Commission, totaling between 700 to 800 annually on average, would be reviewed and processed by the legal and enforcement division of the OGA.

a. Unnecessary weakening of the watchdogs

The proposal unnecessarily weakens the watchdog agencies. Specifically, for the FOI Commission, it would mean diminishing our current staff by two-thirds - this, from an already greatly reduced position number. In 2011, before that year's formation of the OGA, the Commission had a staff of 23. After the consolidation

and other budget cuts and concessions, we are now down to 15. With this proposal, Commission staff will be reduced to potentially 5 people.

Of even greater concern, is the attempt to take over the Commission's complaint review and hearing processes. Under the proposal, the determination of how to proceed with a complaint, whether there is jurisdiction, assignment of hearing officers, and the conducting of the hearings, is taken from the Commission, and put under the authority of a gubernatorial appointee. It also appears that individual Commissioners would lose the ability to hear contested cases themselves.

Last year, over 700 formal complaints were filed with the Commission, 330 of which were against state agencies, almost all of which agencies are under the authority of the governor and are part of the administration. Under the current law, such complaints were reviewed by the staff of our independent Commission; and many were heard by citizen Commissioners or FOIC staff, who report not to the governor but to the Commission as a whole. Under the proposal before you, future complaints against state agencies will be reviewed and heard by staff that can be hired and fired by the executive administrator, a gubernatorial appointee. This presents an unnecessary and alarming conflict; and public perception of the Commission will suffer, without a doubt.

b. The proposal has no structure and is not based upon a careful plan.

The language of HB 6354 has no structure for the conduct of the new legal and enforcement division, and does not make sense. Further, the proposal disregards the core independent missions of the entities that comprise the OGA and utterly fails to incorporate or take into account the practices and procedures under which these entities operate under existing statute and regulation. No one consulted with the FOI Commission prior to submitting this proposal. Thus, there has been no analysis of the caseload numbers, current procedures, time requirements, and conflicting processes preceding this proposal. From what we gather, neither has there been any analysis of the diverse and complex statutes, regulations, and case law fundamental to each of the five agencies proposed to be immersed into the new legal and enforcement division.

c. The proposal saves little to no money and does not take into account the cost to government transparency and accountability.

From a budgetary standpoint, the bill proposes to transfer state employees among divisions within the OGA. Since the state must pay the same salaries and benefits other than 2 vacant positions that will be eliminated, no savings are achieved. In fact, there will likely be significant dollar costs associated with the proposal, because it will necessitate moving employees, purchasing equipment such as computers and furniture, and creating office space for the new division.

Further, there will be conflict costs insofar as each of the agencies concerned has a separate and distinct mission, which will inevitably be at odds with one another. For example, the FOI Commission is an agency whose primary mission is transparency, while the other agencies necessarily have a tremendous amount of

confidentiality built into their records and processes, including hearing processes. Moreover, the FOIC has jurisdiction over each of the entities within the OGA and the new legal and enforcement unit. Obvious conflicts, as well as ethical and professional responsibility questions, will arise and will threaten the public's confidence in these heretofore independent entities if this proposal becomes law. Finally, the further consolidation of the OGA and creation of the legal and enforcement unit will deprive Connecticut citizens of the specialized expertise of the individuals who currently work for these entities, which the public has come to rely upon and trust.

The Commission urges this committee to act courageously, as it has done in the past, to preserve the independence of the FOI Commission, as well as the independence of the other divisions within the OGA, in the face of this ill-considered attempt to gain incremental control over the watchdogs, for no articulated reason and with no savings achieved.

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